

**David A. Wright, Chairman**

Chairman, South Carolina Public Service Commission

**Renze Hoeksema, Vice Chairman**

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**Robert Capstick, Finance**

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**Greg R. White, Communications**

Commissioner, Michigan Public Service Commission



May 24, 2013

The Honorable Ron Wyden, Chairman  
Senate Energy & Natural Resources Committee  
304 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Lisa Murkowski, Ranking Member  
Senate Energy & Natural Resources Committee  
304 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Dianne Feinstein, Chair  
Senate Energy & Water Development Appropriations  
Subcommittee  
184 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Lamar Alexander, Ranking Member  
Senate Energy & Water Development Appropriations  
Subcommittee  
184 Dirksen Senate Office Building  
Washington, DC 20510

Dear Senators Wyden, Murkowski, Feinstein, and Alexander:

The Nuclear Waste Strategy Coalition (NWSC) appreciates your commitment to advance the nuclear waste policy debate with the April 2013 release of your discussion draft of the "Nuclear Waste Administration Act of 2013." We thank you for this unusual opportunity to provide input before legislation has been introduced, and we offer the following comments for your consideration.

The NWSC is an ad hoc organization representing the collective interests of member state utility regulators, consumer advocates, tribal governments, local governments, electric utilities, and other government and industry experts on nuclear waste policy matters. Our primary focus is to protect electric ratepayer payments into the Nuclear Waste Fund (NWF) and to support the removal and ultimate disposal of used nuclear fuel and high-level radioactive waste currently stranded at numerous sites across the nation.

To that end, we have long supported and continue our call for:

**PROMPT ACTION BY THE FEDERAL GOVERNMENT TO MEET ITS OBLIGATION**

The federal government should act now to meet its longstanding obligation to promptly remove used nuclear fuel and high-level radioactive waste from existing and decommissioned reactor sites in our states. Electric consumers have paid approximately \$35 billion (including interest) and contribute approximately \$750 million annually into the NWF. Consumers have met their obligation under the Nuclear Waste Policy Act (NWPA), but the federal government has not.

Specifically, the following five actions reflect the NWSC's long-standing goals directed at the prompt removal of used nuclear fuel and high-level radioactive waste from operating and decommissioned reactor sites in our states:

## **1 *Establishing Permanent Disposal & Completing the Yucca Mountain License Application***

Recognizing a need for disposal under any scenario, actions to support the prompt removal of used nuclear fuel and high-level radioactive waste must include establishing a permanent disposal facility as soon as possible. While referencing the Nuclear Waste Policy Act (NWPA), the discussion draft does not adequately reaffirm the need to carry out the important statutory requirements pertaining to the nation's first permanent repository at Yucca Mountain. The NWPA is the law of the land and should be enforced. Specifically, we call for the completion of the Nuclear Regulatory Commission's (NRC) independent and well-advanced review of the Yucca Mountain license application, which was submitted by the Department of Energy (DOE) in 2008.

The NWSC continues to urge you to ensure that the NRC and DOE complete this scientific evaluation. Specifically, we request your leadership in (i) appropriating the necessary funds to facilitate its timely completion and (ii) requesting a specific plan from DOE and NRC for completing the licensing process, including identification of the resources required, particularly in light of pending action by the US Court of Appeals for the DC Circuit. Whether or not a consent-based process for future disposal facilities is enacted and successful, the Yucca Mountain repository was designated by Congress and merits the scientific review begun years ago and required by law. Given the approximately \$35 billion (including interest) paid by electric consumers for the purpose of such disposal, it is time for the NRC to provide answers to the public.

We highlight two key provisions pertaining to permanent disposal in the discussion draft. First, the draft proposes to establish a consent-based process for siting repositories. This language should not, and does not appear to, modify existing law with respect to the designation of Yucca Mountain. Regarding consent-based siting processes, the NWSC emphasizes (i) the need for flexibility so as not to limit creative and effective solutions that may be proposed by potential hosts and (ii) the need to have an enforceable agreement by the end of the process.

Second, we note that the draft requires the Administrator's mission plan to provide for a repository to be sited under this new process and operational not later than December 2048. This milestone mirrors the DOE Strategy's proposed repository date, which is unsupported and so distant that potential hosts for consolidated storage facilities would be justifiably nervous about becoming de facto permanent sites. This concern may have driven the draft's linkage between consolidated storage and progress on a repository. It would be a far better signal to potential hosts and to the public for Congress and the Administration to support timely completion of the Yucca Mountain process and to call for a more reasonable date for an additional repository sited under a consent-based approach.

## **2 *Ensuring Consumer Payments Used for Intended Purpose***

The NWSC strongly supports the need to fix the funding mechanism for the nuclear waste program so that money collected from consumers is used for its intended purpose. Regarding the new Working Capital Fund proposed in the discussion draft, we commend the effort to stop future raiding of consumer payments intended for the program. However, to the extent the Working Capital Fund remains subject to appropriations (Section 401(c)(1)), it potentially limits the management entity's ability to carry out necessary program activities in contrast to the stated intent.

We support NARUC's prior suggestion to strengthen financial support of the new organization by transferring the interest earned on the NWF balance to the new Working Capital Fund. Likewise, we support future one-time fee payments under the NWPA be paid into the Working Capital Fund. The NWSC also would like express assurance that the balance in the NWF will be made available to the management entity when program needs dictate.

Finally, we highlight for your consideration one additional funding reform measure. In a letter to the President before their January 2012 report containing the same novel recommendation, the Blue Ribbon Commission on America's Nuclear Future (BRC) Co-Chairs delineated near-term steps designed to protect future payments by electric consumers. Essentially, their proposal called for only those fee collections matching Congress' annual appropriations to the nuclear waste program to be deposited into the NWF, with any excess to be held in escrow until needed to fund future appropriations to the program. Unfortunately, those recommendations do not appear to have been pursued by the Administration, and no transparent explanation has been offered.

### **3 *Reforming the Management of the Nuclear Waste Program***

Following decades of budget cuts, management turnover, and missed deadlines, our members wholeheartedly support the concept of a new, single-purpose organization to develop and implement a focused, integrated program for the transportation, storage, and disposal of nuclear waste. While such an organization could be structured numerous ways, the key is to establish an entity that ensures accountability and reasonably insulates the organization from political interference and excessive turnover in key positions. We note that the federal corporation model served as the basis of companion bills introduced by Senator Voinovich (S. 3322) and Representative Upton (H.R. 5979) in 2010, and the BRC and numerous other experts expressed the same preference following extensive study of the options.

Respectfully, the bill's proposed Nuclear Waste Administration and Oversight Board are lacking with respect to some of the key elements. As further addressed in the response to Question 6, it is important that the new management entity be governed by a board of directors. Additionally, key stakeholders (such as state public utility commissioners) should serve on the board and perhaps in other advisory capacities. In the discussion draft, the Administrator is given the option to assemble advisory committees; however, there is no guarantee that key stakeholder input will be considered. See additional comments in response to Questions 7-8.

### **4 *Providing for Consolidated Storage with Priority for Shutdown Reactor Fuel and High-Level Radioactive Waste***

Consolidated storage should be authorized and funded as a safe, cost-effective option for managing spent nuclear fuel and high-level radioactive waste from decommissioned and operating plants. While a permanent facility is being licensed and constructed, one or more storage facilities would permit the federal government to begin meeting its obligations and reduce taxpayer liabilities associated with the government's delay. Therefore, the NWSC supports pursuing permanent disposal facilities and consolidated storage facilities on parallel tracks. We are pleased that the discussion draft expressly includes authorization language to develop consent-based consolidated storage with used nuclear fuel from the decommissioned reactor sites given priority for transfer. Regarding consent-based processes for siting storage and disposal, the NWSC wishes to reemphasize (i) the need for flexibility so as not to limit creative and effective solutions that may be proposed by potential hosts and (ii) the need to have an enforceable agreement by the end of the process.

We are concerned that the bill's requirement that utilities settle their lawsuits against the federal government in order to be permitted to use a consolidated storage facility would perpetuate the untenable situation of prolonged on-site dry cask storage and mounting federal government liability. The US Courts have consistently and clearly indicated which entity has not met its obligations under the law and in accordance with its contracts with utilities. Performance remains the federal government's key to avoiding future liability.

## **5 Facilitating the Transport of Used Nuclear Fuel and High-Level Radioactive Waste**

The federal government should facilitate the construction and operation of infrastructure and systems necessary to transport commercial used nuclear fuel and high-level radioactive material (as required in the NWPA) in existing and future NRC-licensed canisters to consolidated storage and permanent disposal facilities as appropriate.

### **CONGRESSIONAL LEADERSHIP**

Your continued leadership on this important national issue is needed – to facilitate the removal of used nuclear fuel and high-level radioactive waste from existing and decommissioned reactor sites across the country and to protect millions of electric consumers and all taxpayers. The NWSC stands ready to work with you and your Congressional colleagues, the Administration, and DOE to advance meaningful nuclear waste policy reform.

Thank you again for the opportunity to weigh in with respect to your discussion draft.

Sincerely,



David A. Wright  
Chairman, Nuclear Waste Strategy Coalition  
Chairman, South Carolina Public Service Commission

cc: Mr. Josh Sheinkman, Majority Staff Director, Senate Energy & Natural Resources Committee  
Ms. Karen Billups, Minority Staff Director, Senate Energy & Natural Resources Committee  
Mr. Doug Clapp, Majority Clerk, Senate Energy & Water Development Appropriations Subcommittee  
Ms. Carolyn Apostolou, Minority Clerk, Senate Energy & Water Development Appropriations Subcommittee

**Questions**

- 1 Should the Administrator take into account, when considering candidate storage facility sites, the extent to which a storage facility would: (a) unduly burden a State in which significant volumes of defense wastes are stored or transuranic wastes are disposed of; or (b) conflict with a compliance agreement requiring the removal of nuclear waste from a site or a statutory prohibition on the storage or disposal of nuclear waste at a site? Alternatively, should the State and other non-federal parties seeking to site a candidate storage facility be allowed to determine whether they are unduly burdened? Should the final consent agreement, which would be sent to Congress for ratification, contain an authorizing provision to amend any conflicting compliance agreement or statutory prohibition?**

In general, approaches allowing for maximum flexibility by potential hosts should be favored, and inclinations to legislatively address each potential scenario and each potential consent agreement provision should be resisted. The state and other non-federal parties seeking to site a candidate storage or disposal facility are in the best position and should be allowed to determine whether and to what extent they may be (i) burdened by existing storage or disposal facilities, (ii) restricted by agreements requiring removal of nuclear waste from a site, and (iii) otherwise prohibited from using a potential site for nuclear waste storage or disposal. In addition, the state and other non-federal parties seeking to site a candidate storage or disposal facility should be given latitude to address any such conflicts as they see fit in accordance with applicable laws and rules.

Any entity designated to oversee the nation's nuclear waste program (the Department of Energy's Office of Civilian Radioactive Waste Management under existing law; a Nuclear Waste Administrator and Oversight Board under the current proposal; or an entity similar to that proposed in Senator Voinovich and Representative Upton's companion bills introduced in 2010 and widely supported by a range of experts including the Blue Ribbon Commission on America's Nuclear Future) should be focused on the mission of promptly carrying out the federal government's longstanding obligation to remove used nuclear fuel and high-level radioactive waste and the specific actions to support that mission as outlined in our transmittal letter. We understand that Congress may expand the mission of such a management entity; however, we respectfully request that Congress and such entity focus on tasks that need to be assigned to the management entity to support its mission and not on tasks that are better left to capable stakeholders such as state and other non-federal parties seeking to site a candidate storage or disposal facility. As such, Congress should avoid adding requirements that, while well-intentioned, may prove to be unnecessary barriers to negotiations and positive, timely results.

- 2 Should the bill establish a linkage between progress on development of a repository and progress on development of a storage facility? If so, is the linkage proposed in section 306 of the bill appropriate, too strong, or too loose? If a linkage is needed, should it be determined as part of the negotiations between the state and federal governments and included in the consent agreement rather than in the bill?**

Although well-intentioned, statutory linkage between consolidated storage and progress on a permanent disposal facility is not necessary and prevents site-specific flexibility. Therefore, the bill should not establish such a linkage, including the one proposed in Section 306. In a consent-based siting scenario, potential consolidated storage facility hosts would be empowered to assess and manage the risks of becoming *de facto* permanent facilities, and they will undoubtedly do so. If a linkage is necessary, it should therefore be determined as part of the negotiations between the parties to the consent agreement and not by federal legislation. Again, Congress should avoid adding requirements that, while well-intentioned, may prove to be unnecessary barriers to negotiations and positive, timely results.

Recognizing a need for disposal under any scenario, the country must promptly site and construct a permanent disposal facility. Therefore, we urge the Department of Energy (DOE) and the Nuclear Regulatory Commission (NRC) to resume and complete the Yucca Mountain license application review, and we urge Congress to properly fund the repository program accordingly. Such actions will ensure that current dry cask storage and future consolidated storage facilities do not become *de facto* permanent disposal facilities.

**3 Should the bill establish separate storage and disposal programs with clearly defined requirements for each, with any linkage negotiated in the consent agreement between the federal and non-federal parties, to allow the two program to run on separate, but parallel tracks, as proposed in the alternative section 305 (which would replace section 304(b)-(g) of the draft bill)?**

Given the need for action following protracted federal delay, disposal programs (per the NWPAs and any new legislation related to siting additional repositories) and consolidated storage programs should be pursued in parallel but with differences in the respective processes and related timelines. Under a consent-based process, Congress should consider setting forth basic requirements regarding new storage and disposal programs in legislation but leaving specific guidelines and implementation details to be developed by the management entity in consultation with potential hosts and other stakeholders as appropriate. While we emphasize flexibility to account for site-specific circumstances, it is important that any consent-based process (whether for storage or disposal facilities) result in an enforceable agreement. (See response to Question 2 regarding linkage between consolidated storage and a permanent repository.)

To be clear, a permanent disposal program has already been established by the NWPAs. The NWSC continues to call for NWPAs enforcement, including completion of review of the license application for the designated Yucca Mountain repository. Due to the NWPAs capacity limits on this first repository and projections that commercial used nuclear fuel will exceed those limits, a second repository will be necessary. In addition, until a repository is licensed and opened, consolidated storage with a priority for shutdown reactor fuel will be needed. Such storage will allow the federal government to begin meeting its obligation to remove used fuel from plant sites across the country.

**4 To what extent should the siting and consensus approval process for spent fuel storage facilities differ from that for the repository? Should the Administrator be required to conduct sufficient site-specific research (referred to as “characterization” in the bill) on candidate storage sites to determine if they are suitable for storing nuclear waste or only on candidate repository sites to determine if they are suitable for geologic disposal of nuclear waste? Should the Administrator be required to hold public hearings both before and after site characterization (as required by current law in the case of the Yucca Mountain site) or only before site characterization?**

Both consolidated storage facilities and permanent repositories would be subject to NRC regulations pertaining to the respective type of facility. Such regulations will drive the level of characterization necessary to receive the appropriate license. In the case of consolidated storage, the regulations may be found in 10 CFR Part 72, but in the case of a permanent repository other than Yucca Mountain, the NRC and Environmental Protection Agency (EPA) may have to develop new regulations related to a generic repository.

Conducting public hearings in both consolidated storage and repository development processes will involve and inform the public and build public confidence. However, this is another area where the bill should be more flexible so that the management entity can work with potential hosts and other affected stakeholders to determine details such as the optimal number, duration, and locations of public hearings.

**5 Should the siting process in section 304 of the draft bill be streamlined? If so, how?**

See response to Question 3.

**6 Should the new entity be governed by a single administrator or by a board of directors?**

The NWSC greatly prefers that the new management entity be governed by a board of directors rather than by a single administrator appointed by the President as proposed. While board members would be appointed, the entire board would be responsible for hiring, managing, and firing the head of the management entity or chief executive/administrative officer (e.g., CEO). This better insulates the CEO from political interference, and the CEO is accountable to a presumably knowledgeable and engaged board, rather than politically-appointed senior federal officials whose interest in and time for nuclear waste oversight is likely negligible. For your consideration, companion bills introduced by Senator Voinovich (S. 3322) and Representative Upton (H.R. 5979) in 2010 proposed a board of directors with substantial stakeholder representation to govern the recommended management corporation.

**6(a) If by a single administrator, should the administrator serve for a fixed term? If so, how long should the term of service be? Should the legislation prescribe qualifications for the administrator? If so, what should be the selection criteria?**

The NWSC does not believe the new entity should be governed by a single administrator as proposed in the discussion draft for the reasons expressed in our response to Question 6. If that model advances, however, the Administrator should serve for a fixed term that is longer than one or more political cycles so as to avoid some of the historical problems with a lack of continuity in the management of the program. If the Administrator is to be politically appointed, legislation should prescribe a minimum set of qualifications to ensure high-caliber candidates with relevant experience. If a board of directors is instead used to govern the new management entity and its CEO, one can expect the board to develop a reasonable set of minimum qualifications and a process for selection from a list of candidates.

**6(b) If by a board of directors, how many people should comprise the board and how should they be selected?**

A board of directors to govern the new management entity shouldn't be so large that it becomes difficult for the board to act, and it should be an odd number to avoid tie votes. As proposed in the 2010 companion bills by Senator Voinovich and Representative Upton, nine appears to be a reasonable number of directors and would allow for substantial representation of those that contribute financially to the NWF. Knowledgeable and engaged stakeholders such as state public utility commissions, state consumer advocates, and utilities should be represented on the board. We suggest that national organizations such as the NWSC, the National Association of Regulatory Utility Commissioners (NARUC), the Nuclear Energy Institute (NEI), and the National Association of State Utility Consumer Advocates (NASUCA) provide nominees for such key stakeholder slots. In addition, the board should have representation from both the public and private sectors, in contrast to the discussion draft's Oversight Board. Terms should be longer than a political cycle and should be staggered to avoid the instability of significant turnover. A minimum set of qualifications should be included. Here again, we offer for consideration the provisions regarding board makeup and qualifications in the 2010 Voinovich and Upton bills (S. 3322; H.R. 5979).

- 7 The Blue Ribbon Commission recommended establishment of both a board of directors for management oversight (whose “primary role ... is not to represent all stakeholder views, but rather to carry out fiduciary responsibilities for management oversight”) and “a larger and more widely representative stakeholder advisory committee.” The draft bill responds to these recommendations, first, by establishing a Nuclear Waste Oversight Board of senior federal officials and, second, by authorizing the Administrator to establish advisory committees. Should the Oversight Board and advisory committee be combined into a single body to perform both management oversight and stakeholder representation functions? Should the focus and membership of any advisory committees be established in the legislation or left to the Administrator?**

For the reasons outlined in the response to Question 6, the NWSC would much prefer a board of directors to govern the management entity to the proposed Oversight Board of three senior federal officials. The concept of stakeholder advisory committees has merit, but given that such committees are formed at the option of the Administrator, there is no guarantee that any stakeholders (state commissioners, utilities, etc.) will be represented at all given the current discussion draft language. The best way to combine management oversight and stakeholder representation functions is to ensure that a board of directors, including key stakeholder slots, is created to govern the management entity. Additional stakeholder advisory committees may also prove useful, especially to provide particular expertise on issues with important technical, economic, or policy implications.

- 8 Dr. Meserve testified in 2012 that representatives of stakeholders and public utility commissioners should be added to the Nuclear Waste Oversight Board. Would these additions make the Board better able to carry out its fiduciary oversight mission effectively?**

Adding state public utility commissioners would improve the Nuclear Waste Oversight Board in a number of ways, including making it better able to carry out its fiduciary oversight mission. Having said that, the best way to combine management oversight functions, such as fiduciary oversight, and stakeholder representation functions is to ensure that a board of directors, including key stakeholder slots, is created to govern the management entity. Stakeholder slots on the board of directors should include at least 1-2 representatives of state public utility commissions.